IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 216 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

ABDUL RASHID A SHAIKH

Appearance:

MR MUKESH R SHAH for Appellants No. 1-2

MR UM SHASTRI for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 20/03/2003

ORAL JUDGEMENT

1. Admit. By consent, the appeal is taken up

immediately for final hearing.

2. This appeal is directed against the judgment and decree dated 27th June, 2002 passed by 7th Joint Civil Judge (S.D.), Godhra in Special Civil Suit No.101 of 1996 whereby the learned Judge overruled the objections filed by the appellants against the award made by the Arbitrator and passed a decree in terms of the award.

3. The respondent filed an application (Miscellaneous Application No.48 of 1994) under Section 20 of the Arbitration Act, 1940. The application was subsequently numbered as Special Civil Suit No.101 of 1996. The prayer for appointment of Arbitrator was allowed and Shri A.T. Doshi, Retired Chief Engineer was appointed as Arbitrator. On completion of arbitration proceedings, the Arbitrator published the award and sent it to the court. On 7th August, 2001, the respondent made an application under Section 17 praying that the decree may be passed in terms of the award. Notice was issued to the appellants and the appellants filed their objections to the award. The learned Trial Judge overruled the objections saying that they were only formal in character and no substantial objection had been raised.

4. The appellants have, therefore, filed this appeal challenging the order of the learned Judge making the award a Rule of the court and passing the decree in terms thereof. The learned counsel for the appellants has produced a copy of the objections which had been filed. The learned Trial Judge observed that only general objections are raised such as that the award is bad and illegal; that the Arbitrator had not taken the evidence and facts into consideration; that the Arbitrator had shown undue sympathy for the Contractor; that the Arbitrator had erred in holding that the appellants had committed breach of the contract and that the award made by the Arbitrator was not justified. The learned Trial Judge rightly held that no substantial objection had been raised. The above objections do not disclose any error of law apparent on the face of the award so as to justify interference under Section 30 of the Act. However, the learned counsel for the appellants submitted that the Arbitrator and the court had erred in awarding interest at the rate of 12%. He drew my attention to the objections against the award in which this point was specifically raised. The learned counsel for the respondent states that he has no objection if the interest is awarded at the rate of 9%. In the circumstances, the award and the decree passed by the

Trial Court in terms thereof are confirmed subject to the modification that the appellants shall be liable to pay interest at the rate of 9% instead of 12% awarded by the Arbitrator and the Court. The appeal is partly allowed and the award and the decree passed by the Trial court shall stand modified to the said extent. No order as to costs.

5. The learned counsel for the appellants states that the appellants have deposited the entire amount payable under the award and decree in the Registry pursuant to the order dated 29th January, 2003 passed in Civil Application No.499 of 2003. The amount shall be paid back to the appellants and the appellants shall deposit in the Trial Court the amount payable under the decree as modified by this order, within four weeks from the date of withdrawal of the amount. On the amount being deposited, the respondent will be at liberty to withdraw the same.

(M.C. Patel, J.)
hki